

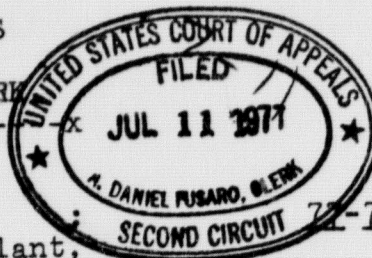
***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

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77-7064
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT, NEW YORK



B
P/S

MADAN GAUTAM,

Plaintiff-Appellant,

-against-

First National City Bank, et al,

Defendant-Appellee.:

Brief in Reply to

Brief of the Defendant-

Appellee. (Citibank).

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Reply Brief

Respectfully, plaintiff in accurate statement of facts again emphasize the inappropriateness of the summary judgement and the necessity for trial to determine the disputed issue of facts.

1. Plaintiff applied THREE-TIMES for the JOB AT THREE DIFFERENT occasions, and was rejected each time.
2. Plaintiff MADE TELEPHONE CALLS to Attorney Mr. Jossen in the year 1975, to stop the litigation, and hire him, but was rebuffed.
3. Plaintiff once again contacted Mr. Lewis, the defendant's attorney in Sept. 1976, that he be given a position, and again was turned down.

4. Affidavit of Mr. Jansen is in gross error, as every one knows First National City Bank (Citibank), is heavily guarded round the clock, all the Citibank's employees must show their identification cards, before they enter, and all other must be recognised or confirmed with the department they are visiting, by telephone by the desk guard. Plaintiff was no exception to the rule. After the guard confirmed with the personnel, about the scheduled appointment with Mr. Jansen only then plaintiff was allowed to take the elevator.

As far Mr. Jansen's courtsey, plaintiff was asked only two questions near the elevator; if plaintiff has a Resident Visa, and that plaintiff would accept a lower salary than \$16,000 per year. Answer to both the questions was in affirmative.

The statement of facts is misleading to the extent, it omits to call the attention of the Court on several important pieces of information on record.

EX-PARTE DECISION OF THE STATE HUMAN RIGHTS APPEAL BOARD OF NEW YORK
Defendants appeared before the New York State Appeal Board, and gave false statements, while the victim who brought the complaint was told to stay home. On the basis of these misconstrued statements decision was handed down on June 30, 1975, but was not mailed till Jan. 1976.

In any event the sure fact that the defendant raises the issue on this appeal demonstrates, that it considers there to be material disputed issue of fact. This the defendant own brief demonstrates on its face the impropriety of the summary judgement granted below by the District Judge.

Similar considerations apply to the defendants statement that it does not have a pattern of practice of discriminating of persons of Indian Origin. The evidence relied on, by the defendants on page 6, therefore of its validity is open to serious questions. Plaintiff is prepared to argue at trial, that it failed to sustain the proposition for which it is cited.

In raising the issue of the continuing effect of the defendant's discrimination on the plaintiff, plaintiff is not attempting, as defendant implies to argue "A perpetual Right" to file charges before E.E.O.C., rather it is suggested that his replies reasonably be considered at least until its effects disappear. In this case the injury was refusal to hire, and its primary financial, social, emotional and other effects would continue at least until such times, as and when plaintiff has acquired adequate substitute employment. Since despite the plaintiff's best efforts, he had not done so, until the time of the filing of the charges with the EEOC he was still suffering from defendant's unlawful acts.

ARGUMENT

The timely charge the learned defendant's attorney trying to stress about in the present case, are totally misplaced, for instance in the United Air Lines, Inc. v. Evans, Ms. Evans who resigned from the Air Lines in 1968, and was rehired again in 1972, filed a charge with the agency, that she should be given her seniority back, besides other benefits. The case has no relevance to the one in the second circuit.

In Alexander V. Gardner-Denver Co. 415 U.S. 36, the U.S. Supreme court ruled, that title VII was designed to supplement, rather than supplant, existing laws and restitution relating to employment discrimination, as may be inferred from the legislation history of Title VII, which manifests a congressional intent to allow an individual to pursue rights under Title VII and other applicable State and Federal Statute.

In "Stroud V. Delta Airlines Inc. the learned attorney for the Citibank, totally steps himself out of the present analogy, here Etta Ruth Stroud, a lady knowingly violates the Airlines standing rules (long been established) a no marriage package. She marries and when gets dismissed, files charges of discrimination against the outfit. Plaintiff was in the year 1974, was never hired, and hence did not violate any of the Citibank's existing rules or regulations, by filing the charge before the EEOC.

In Smith V. Office of the Economic Oppor. for St. of Ark. 538 F.2d 226 Employing Agency demonstrated that decision not to hire the alleged discriminatee occurred on Oct. 27, 1972, and that the position was not thereafter filled because of various hiring freezes imposed by the Governor. There was no such freeze imposed by the Citibank, at any time, in the City of New York.

On the contrary, Citibank's recruiters, have been constantly visiting the Universities campuses, for hiring, besides hiring other candidates not of Indian national origin.

In Molybdenum Corp. of Am. V. EEOC, 457 F.2d 935, the applicant had defective vision, to a substantial degree, and hence was not hired. Here Plaintiff was never given any checkups, but a dry one minute interview near the elevator, by the recruiter.

In Kohn V. Royall, Koegal & Wells; 59 F.R.D. 515, 518, 496 F.2d (2nd Circuit), the attorney has done a favor to the plaintiff's case or cause-Kohn filed a sex discrimination case against the defendants, and sought mandatory injunctive relief to correct past discriminatory practices in both recruiting and internal employment procedures, as well as, damages for herself caused by refusal to hire her. Defendant (Like Attorney Lewis) moved to dismiss on the ground that Kohn had not filed a Timely Complaint with the EEOC, as required by Statute. Two days later, on Sept. 28, 1972, Kohn moved

Pursuant to rule 11A of the local rules of the Southern District of New York, for a determination whether the suit could proceed as a class action. The most learned District Judge of the SOUTHERN DISTRICT, Hon'ble Judge LASKAR not only denied the defendants motion to dismiss the complaint, but granted Kohn motion for class action status also. (59F.R.D.518). Judge found that although Kohn had not filed her EEOC. complaint within the 210 day statutory period-her failure to gain employment with Royall, Koegal-because a virtual certainty(as is the plaintiff's case)so refusal to hire Kohn represented an allegedly "Continuing Violation" of Title VII. Plaintiff further quotes, "Judge Laskar, concluded, the discriminatory pattern of which plaintiff complain(was) by definition, 'fresh'. accordingly the policy behind a statute of limitation to bar stale claim-didnot apply.....

Judge Laskar, hence ordered, Motion to dismiss the complaint is denied, Motion to proceed for class action determination granted. Equal employment provision of civil rights act, contemplates elimination of major social ills of job discrimination, through suits by individuals acting as 'Private Attorney Generals', Civil Rights Act of 1964, Sec 706(e), 42 U.S.C. A. sec 2000e-5(e),

F.Civ.Procedures 1741. Dismissal of suits brought pursuant to Equal Employment Provisions of Civil Rights for procedural irregularities is not favored, since statutory scheme contemplates achievement of its goals through largely informal efforts of laymen. Hence, plaintiff asserts, undeniably, existence of a continuing violation tolls the statute of limitation, satisfying the Jurisdictional pre-requisite of Timely filing of EEOC charges. see *Partness V. Crewry U.S.A. Inc.* 444 F.2d 1186, 1188 (7th Circuit), Cert. denied.

As far as ISOLATED ACT of the Citibank is concerned, -it says in *Watson V. Limbach* 333 F.Supp 754 (S.D. Ohio, 1971), a case which is exactly on point, the statute requires "at least an opportunity for plaintiff to prove that alleged discrimination is a continuous and ongoing variety". Since an individual claimant takes on the mantle of the state in seeking to rectify wrongs against himself. Accordingly, an individual's claim, when it results from pervasive discriminatory attitude, cannot be considered in isolation.

See ft.note on page 14 of the defendant's brief, plaintiff also checked the box, if the employment discrimination is of "Continuing Nature". Defense cites the case of the Electrical workers V. Robbins & Myers, Inc. 429 U.S. 229 (1976), here date of the conclusion of the discharge, was the "final" date of the Alleged Unlawful Practice" is on Statute, the case was reversed by the U.S. Supreme Court.

There are a number of important decisions handed down by the Second Circuit, upholding plaintiff's rights to have thier day in the court.

In defense, plaintiff is seeking a review of the decision of the court below, which was inappropriate, in its totality.

Citing the Electrical workers case, it must be pointed out, that whereas, the grievence procedures went through a private body of arbitrators, which are not governed by any federal time statute, and hence cannot be held responsible for the untimely filing of the charge before the Federal Agency. On the other hand, Local, State or any other agency charged by the state laws, has a responsibility towards victims of discrimination, and must resort to equitable process, and not hand down decisions on EX-PARTE manner.

Plaintiff totally relied on the State Agency, for his protection of the 14th amendment, and thus waited for a unusually long period of time. It was only after, plaintiff got the decision, he filed the Charge with the EEOC. See Anne DARTTV. Shell Oil Co., 539 F.2d 1256 (10th Circuit. 1976) Cert. Granted, 97 S.Ct. 1097 (U.S. Feb 22, 1977), where the plaintiff only moved after she has exhausted all the pre-requisite steps, to have her grievances redressed. The Dist. Judge, dismissed the motion of the Shell Oil Co, that the complaint of the plaintiff be dismissed, for untimely reasons, the cir. court upheld the lower court decision. Step by step, the case is consistent with this case.

In the recent EEOC V. OCCIDENTAL LIFE INSURANCE CO. 535 F.2d 533, the case was decided in favor of EEOC, reported on June 21, 1977, by the U.S. Supreme Court 45 LW 4753..... where filing of the untimely charge with the EEOC was upheld, by the U.S. Supreme Court. EEOC could have sued the Citibank on the Plaintiff's behalf, but the burgeoning workload, accompanied by insufficient funds and a shortage of staff attorneys, made it virtually impossible for the regional EEOC, to go to the Federal Court on behalf of the Plaintiff.

Since plaintiff had been damaged irreparably, emotionally, financially, socially, and other measures, which follows the stability and well being of an employed person. It is only prudent for the plaintiff to seek redress under federal statute or similar remedies which may well support and echo his cause. Sec. 1981 of the U.S.C.A. of the Civil Rights Act, falls squarely, to support plaintiff cause. Defendant has more or less, had wanted to expect from the plaintiff a route, which an attorney, fully equipped, with the laws and statute of the Fed. R. of Civil Proc., would or should have followed. In EEOC V. Nicholson File Co., 408 F.Supp. 229 (D.Conn. 1976), The Court's ruling was obviously grounded on the desire to avoid penalizing complainants who timely seek to invoke federal remedies, but who may not initially-at least technically--approach the appropriate federal agency. Plaintiff never dreamt, that Citibank would be so vengeful and destructive, as to go to the Federal Court, to block his future employment with the outfit. Plaintiff never slept on the cause, after hearing the decision from the State Board of Appeal he managed to file the complaint with the EEOC, within the prescribed 30 days limit, and thereafter, filed the complaint with the Federal District Court, that also within the 90 days limit.

To affirm the dismissal of the plaintiff complaint would serve no legitimate interest of the defendants or the cause of interest. It would do immense harm to both the plaintiff as well as to those who are genuinely seeking justice, from the Federal District Court. Again, citing the Dartt V. Shell Oil Co, the Court held that the plaintiff in the case was entitled to equitable relief by way of tolling the notice period. Court was also influenced by the fact that, although the plaintiff's notice of intent to sue was technically not timely filed, the reality was de fact fulfillment of Sec. 626(d)(1) s essential purposees had been met: (1) The plaintiff had not been tardy in notifying the Dept of labor of her complaint, thereby enabling prompt attempts at conciliation of her matter. (2) the employer had received early notice of her allegations. In addition, the court was swayed by its view that the cause for the failuer of the notice formally to be timely submitted was not due to any lack of diliquence on the part of the plaintiff, but rather was attributable to conduct both of the Dept. of Labor and the employer. In parallel here also, the conduct was due to the untardiness of the State Board of Appeals, not mailing the decision to the Plaintiff in time,

Affidavit of Service

Civ. 77-7064

I solemnly swear, under penalty of perjury, that I, Plaintiff in the matter of Madan Gautam V. Citibank et al, have to day, at 21.00 p.m. (E.S.T.) mailed a copy of the Brief, to the above Defendant's attorney, by the U.S. First Class Mail, by the U.S. Letter Box, located at 500 Riverside Drive, New York, N.Y. (10027)

Madan Gautam

Sd: Madan Gautam

Plaintiff-Appellant,

Pro-Se.

July, 11, 1977

Conclusion.

Because of the recent U. S. SUPREME
COURT RULING IN EEOC V. OCCIDENTAL
LIFE INSURANCE CO. ^{6.21.77} - a great
deference be given to the
decision of the EEOC.
Plaintiff, wherefore, humbly
requests the Court, the
decision of the District COURT
be reversed.

Respectfully Submitted;

N.Y.
July 8, 1977

SR: MADAN - GAUTAM.
500 River side Dr.
NEW-YORK, N.Y. (10027)
Plaintiff - Appellant,
(PRO-SE).